

§ 90.712

40 CFR Ch. I (7–1–04 Edition)

been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraph (d) of this section shall:

(1) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 90.712 and 90.713; and

(2) Not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section and prior to the commencement of a hearing under § 90.712, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or revoke the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to performing off-setting measures that remedy the non-conformity at no expense to the owners, and which are approved in advance by the Administrator for all engines of that family produced from the time the certificate is conditionally reinstated if the CumSum statistic does not fall below the action limit.

§ 90.712 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 90.711(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Manager of the Engine Compliance Programs Group and file two copies

with the Hearing Clerk for the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which engine configuration(s) within a family is to be the subject of the hearing; and

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 90.711(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether sampling plans and statistical analyses have been properly applied (specifically, whether sampling procedures and statistical analyses specified in this subpart were followed and whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 90.711(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 90.713 Administrative procedures for public hearing.

The administrative procedures for a public hearing requested under this subpart shall be those procedures set forth in the regulations found at §§ 90.513 through 90.516. References in

§ 90.513 to § 90.511(j), § 90.512(c)(2), § 90.511(e), § 90.512, § 90.511(d), § 90.503, § 90.512(c) and § 90.512(b) shall be deemed to mean § 90.711(j), § 90.712(c)(2), § 90.711(e), § 90.712, § 90.711(d), § 90.703, and § 90.712(c) and § 90.712(b), respectively. References to “test orders” in § 90.513 are not applicable.

Subpart I—Emission-Related Defect Reporting Requirements, Voluntary Emission Recall Program, Ordered Recalls

§ 90.801 Applicability.

(a) The requirements of subpart I are applicable to all nonroad engines and vehicles subject to the provisions of subpart A of part 90. The requirement to report emission-related defects affecting a given class or category of engines will remain applicable for five years from the end of the calendar year in which such engines were manufactured.

(b) Phase 2 engines subject to provisions of subpart B of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except as otherwise provided in this section.

(c) Reference to section 214 of the Clean Air Act in 40 CFR 85.1801(a) is deemed to mean section 216 of the Clean Air Act.

(d) Reference to section 202 of the Act in 40 CFR 85.1802(a) is deemed to mean section 213 of the Act.

(e) Reference to “family particulate emission limits” as defined in part 86 promulgated under section 202 of the Act” in 40 CFR 85.1803(a) and 85.1805(a)(1) is deemed to mean “family emission limits” as defined in subpart C of this part 90 promulgated under section 213 of the Act”.

(f) Reference to “vehicles or engines” throughout 40 CFR part 85, subpart S is deemed to mean “Phase 2 nonroad small SI engines at or below 19 kW.”

(g) In addition to the requirements in 40 CFR 85.1805(a)(9) for Phase 2 engines include a telephone number provided by the manufacturer, which may be used to report difficulty in obtaining recall repairs.

[60 FR 34598, July 3, 1995, as amended at 64 FR 15251, Mar. 30, 1999]

§ 90.802 Definitions.

The definitions in subpart A of this part apply to this subpart. All terms not defined herein or in subpart A have the meaning given them in the Act. The definitions of 40 CFR 85.1801 also apply to this part.

Emission-related defect means a defect in design, materials, or workmanship in a device, system, or assembly described in the approved application for certification which affects any applicable parameter or specification enumerated in 40 CFR part 85, Appendix VIII.

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer to remedy any emission-related defect for which notification of engine owners has been provided.

[60 FR 34598, July 3, 1995, as amended at 64 FR 15251, Mar. 30, 1999]

§ 90.803 Emission defect information report.

(a) A manufacturer must file a defect information report whenever, on the basis of data obtained subsequent to the effective date of these regulations:

(1) The manufacturer determines, in accordance with procedures established by the manufacturer to identify either safety-related or performance defects, that a specific emission-related defect exists; and

(2) A specific emission-related defect exists in 25 or more engines of a given engine family manufactured in the same certificate or model year.

(b) No report must be filed under this section for any emission-related defect corrected prior to the sale of the affected engines to ultimate purchasers.

(c) The manufacturer must submit defect information reports to EPA's Engine Compliance Programs Group not more than 15 working days after an emission-related defect is found to affect 25 or more engines manufactured in the same certificate or model year. Information required by paragraph (d) of this section that is either not available within 15 working days or is significantly revised must be submitted to EPA's Engine Compliance Programs Group as it becomes available.